

AMENDED IN ASSEMBLY MARCH 18, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 856

Introduced by Assembly Member Hagman

February 21, 2013

An act to amend ~~Sections 25005 and~~ *Section* 25102 of the Corporations Code, relating to securities.

LEGISLATIVE COUNSEL'S DIGEST

AB 856, as amended, Hagman. Securities: sale or issue: exemptions.

~~(1) Existing~~

Existing law makes it unlawful for any person to offer or sell in this state any security in an issuer transaction unless the sale has been qualified or unless the security or transaction is exempt from or not subject to qualification, as specified. Existing law provides an exemption for the sale or issue of specified voting common stock or preferred stock to a qualified purchaser with a net worth in excess of specified limits.

This bill would add nonpreferred voting securities, as defined, to the list of securities exempt from qualification requirements under these provisions and would make other conforming changes.

~~(2) The Governor's Reorganization Plan No. 2 of 2012 provides that on and after July 1, 2013, the responsibilities of the Department of Corporations and the Commissioner of Corporations shall be transferred to the Department of Business Oversight and the Commissioner of Business Oversight.~~

~~This bill would make conforming changes per the plan.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 25005 of the Corporations Code is~~
2 ~~amended to read:~~

3 ~~25005. “Commissioner” means the Deputy Commissioner of~~
4 ~~Business Oversight for the Division of Corporations.~~

5 ~~SEC. 2.~~

6 ~~SECTION 1.~~ Section 25102 of the Corporations Code is
7 ~~amended to read:~~

8 25102. The following transactions are exempted from the
9 provisions of Section 25110:

10 (a) Any offer (but not a sale) not involving any public offering
11 and the execution and delivery of any agreement for the sale of
12 securities pursuant to the offer if (1) the agreement contains
13 substantially the following provision: “The sale of the securities
14 that are the subject of this agreement has not been qualified with
15 the commissioner and the issuance of the securities or the payment
16 or receipt of any part of the consideration therefor prior to the
17 qualification is unlawful, unless the sale of securities is exempt
18 from the qualification by Section 25100, 25102, or 25105 of the
19 California Corporations Code. The rights of all parties to this
20 agreement are expressly conditioned upon the qualification being
21 obtained, unless the sale is so exempt”; and (2) no part of the
22 purchase price is paid or received and none of the securities are
23 issued until the sale of the securities is qualified under this law
24 unless the sale of securities is exempt from the qualification by
25 this section, Section 25100, or 25105.

26 (b) Any offer (but not a sale) of a security for which a
27 registration statement has been filed under the Securities Act of
28 1933 but has not yet become effective, or for which an offering
29 statement under Regulation A has been filed but has not yet been
30 qualified, if no stop order or refusal order is in effect and no public
31 proceeding or examination looking towards an order is pending
32 under Section 8 of the act and no order under Section 25140 or
33 subdivision (a) of Section 25143 is in effect under this law.

34 (c) Any offer (but not a sale) and the execution and delivery of
35 any agreement for the sale of securities pursuant to the offer as
36 may be permitted by the commissioner upon application. Any
37 negotiating permit under this subdivision shall be conditioned to
38 the effect that none of the securities may be issued and none of

1 the consideration therefor may be received or accepted until the
2 sale of the securities is qualified under this law.

3 (d) Any transaction or agreement between the issuer and an
4 underwriter or among underwriters if the sale of the securities is
5 qualified, or exempt from qualification, at the time of distribution
6 thereof in this state, if any.

7 (e) Any offer or sale of any evidence of indebtedness, whether
8 secured or unsecured, and any guarantee thereof, in a transaction
9 not involving any public offering.

10 (f) Any offer or sale of any security in a transaction (other than
11 an offer or sale to a pension or profit-sharing trust of the issuer)
12 that meets each of the following criteria:

13 (1) Sales of the security are not made to more than 35 persons,
14 including persons not in this state.

15 (2) All purchasers either have a preexisting personal or business
16 relationship with the offeror or any of its partners, officers,
17 directors or controlling persons, or managers (as appointed or
18 elected by the members) if the offeror is a limited liability
19 company, or by reason of their business or financial experience or
20 the business or financial experience of their professional advisers
21 who are unaffiliated with and who are not compensated by the
22 issuer or any affiliate or selling agent of the issuer, directly or
23 indirectly, could be reasonably assumed to have the capacity to
24 protect their own interests in connection with the transaction.

25 (3) Each purchaser represents that the purchaser is purchasing
26 for the purchaser's own account (or a trust account if the purchaser
27 is a trustee) and not with a view to or for sale in connection with
28 any distribution of the security.

29 (4) The offer and sale of the security is not accomplished by
30 the publication of any advertisement. The number of purchasers
31 referred to above is exclusive of any described in subdivision (i),
32 any officer, director, or affiliate of the issuer, or manager (as
33 appointed or elected by the members) if the issuer is a limited
34 liability company, and any other purchaser who the commissioner
35 designates by rule. For purposes of this section, a husband and
36 wife (together with any custodian or trustee acting for the account
37 of their minor children) are counted as one person and a
38 partnership, corporation, or other organization that was not
39 specifically formed for the purpose of purchasing the security
40 offered in reliance upon this exemption, is counted as one person.

1 The commissioner shall by rule require the issuer to file a notice
2 of transactions under this subdivision.

3 The failure to file the notice or the failure to file the notice within
4 the time specified by the rule of the commissioner shall not affect
5 the availability of the exemption. Any issuer that fails to file the
6 notice as provided by rule of the commissioner shall, within 15
7 business days after discovery of the failure to file the notice or
8 after demand by the commissioner, whichever occurs first, file the
9 notice and pay to the commissioner a fee equal to the fee payable
10 had the transaction been qualified under Section 25110. Neither
11 the filing of the notice nor the failure by the commissioner to
12 comment thereon precludes the commissioner from taking any
13 action that the commissioner deems necessary or appropriate under
14 this division with respect to the offer and sale of the securities.

15 (g) Any offer or sale of conditional sale agreements, equipment
16 trust certificates, or certificates of interest or participation therein
17 or partial assignments thereof, covering the purchase of railroad
18 rolling stock or equipment or the purchase of motor vehicles,
19 aircraft, or parts thereof, in a transaction not involving any public
20 offering.

21 (h) Any offer or sale of voting common stock by a corporation
22 incorporated in any state if, immediately after the proposed sale
23 and issuance, there will be only one class of stock of the
24 corporation outstanding that is owned beneficially by no more than
25 35 persons, provided all of the following requirements have been
26 met:

27 (1) The offer and sale of the stock is not accompanied by the
28 publication of any advertisement, and no selling expenses have
29 been given, paid, or incurred in connection therewith.

30 (2) The consideration to be received by the issuer for the stock
31 to be issued consists of any of the following:

32 (A) Only assets (which may include cash) of an existing business
33 enterprise transferred to the issuer upon its initial organization, of
34 which all of the persons who are to receive the stock to be issued
35 pursuant to this exemption were owners during, and the enterprise
36 was operated for, a period of not less than one year immediately
37 preceding the proposed issuance, and the ownership of the
38 enterprise immediately prior to the proposed issuance was in the
39 same proportions as the shares of stock are to be issued.

1 (B) Only cash or cancellation of indebtedness for money
2 borrowed, or both, upon the initial organization of the issuer,
3 provided all of the stock is issued for the same price per share.

4 (C) Only cash, provided the sale is approved in writing by each
5 of the existing shareholders and the purchaser or purchasers are
6 existing shareholders.

7 (D) In a case where after the proposed issuance there will be
8 only one owner of the stock of the issuer, only any legal
9 consideration.

10 (3) No promotional consideration has been given, paid, or
11 incurred in connection with the issuance. Promotional consideration
12 means any consideration paid directly or indirectly to a person
13 who, acting alone or in conjunction with one or more other persons,
14 takes the initiative in founding and organizing the business or
15 enterprise of an issuer for services rendered in connection with the
16 founding or organizing.

17 (4) A notice in a form prescribed by rule of the commissioner,
18 signed by an active member of the State Bar of California, is filed
19 with or mailed for filing to the commissioner not later than 10
20 business days after receipt of consideration for the securities by
21 the issuer. That notice shall contain an opinion of the member of
22 the State Bar of California that the exemption provided by this
23 subdivision is available for the offer and sale of the securities. The
24 failure to file the notice as required by this subdivision and the
25 rules of the commissioner shall not affect the availability of this
26 exemption. An issuer who fails to file the notice within the time
27 specified by this subdivision shall, within 15 business days after
28 discovery of the failure to file the notice or after demand by the
29 commissioner, whichever occurs first, file the notice and pay to
30 the commissioner a fee equal to the fee payable had the transaction
31 been qualified under Section 25110. The notice, except when filed
32 on behalf of a California corporation, shall be accompanied by an
33 irrevocable consent, in the form that the commissioner by rule
34 prescribes, appointing the commissioner or his or her successor in
35 office to be the issuer's attorney to receive service of any lawful
36 process in any noncriminal suit, action, or proceeding against it
37 or its successor that arises under this law or any rule or order
38 hereunder after the consent has been filed, with the same force and
39 validity as if served personally on the issuer. An issuer on whose
40 behalf a consent has been filed in connection with a previous

1 qualification or exemption from qualification under this law (or
2 application for a permit under any prior law if the application or
3 notice under this law states that the consent is still effective) need
4 not file another. Service may be made by leaving a copy of the
5 process in the office of the commissioner, but it is not effective
6 unless (A) the plaintiff, who may be the commissioner in a suit,
7 action, or proceeding instituted by him or her, forthwith sends
8 notice of the service and a copy of the process by registered or
9 certified mail to the defendant or respondent at its last address on
10 file with the commissioner, and (B) the plaintiff's affidavit of
11 compliance with this section is filed in the case on or before the
12 return day of the process, if any, or within the further time as the
13 court allows.

14 (5) Each purchaser represents that the purchaser is purchasing
15 for the purchaser's own account, or a trust account if the purchaser
16 is a trustee, and not with a view to or for sale in connection with
17 any distribution of the stock.

18 For the purposes of this subdivision, all securities held by a
19 husband and wife, whether or not jointly, shall be considered to
20 be owned by one person, and all securities held by a corporation
21 that has issued stock pursuant to this exemption shall be considered
22 to be held by the shareholders to whom it has issued the stock.

23 All stock issued by a corporation pursuant to this subdivision as
24 it existed prior to the effective date of the amendments to this
25 section made during the 1996 portion of the 1995–96 Regular
26 Session that required the issuer to have stamped or printed
27 prominently on the face of the stock certificate a legend in a form
28 prescribed by rule of the commissioner restricting transfer of the
29 stock in a manner provided for by that rule shall not be subject to
30 the transfer restriction legend requirement and, by operation of
31 law, the corporation is authorized to remove that transfer restriction
32 legend from the certificates of those shares of stock issued by the
33 corporation pursuant to this subdivision as it existed prior to the
34 effective date of the amendments to this section made during the
35 1996 portion of the 1995–96 Regular Session.

36 (i) Any offer or sale (1) to a bank, savings and loan association,
37 trust company, insurance company, investment company registered
38 under the Investment Company Act of 1940, pension or
39 profit-sharing trust (other than a pension or profit-sharing trust of
40 the issuer, a self-employed individual retirement plan, or individual

1 retirement account), or other institutional investor or governmental
2 agency or instrumentality that the commissioner may designate
3 by rule, whether the purchaser is acting for itself or as trustee, or
4 (2) to any corporation with outstanding securities registered under
5 Section 12 of the Securities Exchange Act of 1934 or any wholly
6 owned subsidiary of the corporation that after the offer and sale
7 will own directly or indirectly 100 percent of the outstanding
8 capital stock of the issuer, provided the purchaser represents that
9 it is purchasing for its own account (or for the trust account) for
10 investment and not with a view to or for sale in connection with
11 any distribution of the security.

12 (j) Any offer or sale of any certificate of interest or participation
13 in an oil or gas title or lease (including subsurface gas storage and
14 payments out of production) if either of the following apply:

15 (1) All of the purchasers meet one of the following requirements:

16 (A) Are and have been during the preceding two years engaged
17 primarily in the business of drilling for, producing, or refining oil
18 or gas (or whose corporate predecessor, in the case of a corporation,
19 has been so engaged).

20 (B) Are persons described in paragraph (1) of subdivision (i).

21 (C) Have been found by the commissioner upon written
22 application to be substantially engaged in the business of drilling
23 for, producing, or refining oil or gas so as not to require the
24 protection provided by this law (which finding shall be effective
25 until rescinded).

26 (2) The security is concurrently hypothecated to a bank in the
27 ordinary course of business to secure a loan made by the bank,
28 provided that each purchaser represents that it is purchasing for
29 its own account for investment and not with a view to or for sale
30 in connection with any distribution of the security.

31 (k) Any offer or sale of any security under, or pursuant to, a
32 plan of reorganization under Chapter 11 of the federal bankruptcy
33 law that has been confirmed or is subject to confirmation by the
34 decree or order of a court of competent jurisdiction.

35 (l) Any offer or sale of an option, warrant, put, call, or straddle,
36 and any guarantee of any of these securities, by a person who is
37 not the issuer of the security subject to the right, if the transaction,
38 had it involved an offer or sale of the security subject to the right
39 by the person, would not have violated Section 25110 or 25130.

(m) Any offer or sale of a stock to a pension, profit-sharing, stock bonus, or employee stock ownership plan, provided that (1) the plan meets the requirements for qualification under Section 401 of the Internal Revenue Code, and (2) the employees are not required or permitted individually to make any contributions to the plan. The exemption provided by this subdivision shall not be affected by whether the stock is contributed to the plan, purchased from the issuer with contributions by the issuer or an affiliate of the issuer, or purchased from the issuer with funds borrowed from the issuer, an affiliate of the issuer, or any other lender.

(n) Any offer or sale of any security in a transaction, other than an offer or sale of a security in a rollup transaction, that meets all of the following criteria:

(1) The issuer is (A) a California corporation or foreign corporation that, at the time of the filing of the notice required under this subdivision, is subject to Section 2115, or (B) any other form of business entity, including without limitation a partnership or trust organized under the laws of this state. The exemption provided by this subdivision is not available to a “blind pool” issuer, as that term is defined by the commissioner, or to an investment company subject to the Investment Company Act of 1940.

(2) Sales of securities are made only to qualified purchasers or other persons the issuer reasonably believes, after reasonable inquiry, to be qualified purchasers. A corporation, partnership, or other organization specifically formed for the purpose of acquiring the securities offered by the issuer in reliance upon this exemption may be a qualified purchaser if each of the equity owners of the corporation, partnership, or other organization is a qualified purchaser. Qualified purchasers include the following:

(A) A person designated in Section 260.102.13 of Title 10 of the California Code of Regulations.

(B) A person designated in subdivision (i) or any rule of the commissioner adopted thereunder.

(C) A pension or profit-sharing trust of the issuer, a self-employed individual retirement plan, or an individual retirement account, if the investment decisions made on behalf of the trust, plan, or account are made solely by persons who are qualified purchasers.

1 (D) An organization described in Section 501(c)(3) of the
2 Internal Revenue Code, corporation, Massachusetts or similar
3 business trust, or partnership, each with total assets in excess of
4 five million dollars (\$5,000,000) according to its most recent
5 audited financial statements.

6 (E) With respect to the offer and sale of one class of voting
7 common stock or one class of nonvoting preferred voting securities
8 of an issuer or of preferred stock or preferred securities of an issuer
9 entitling the holder thereof to at least the same voting rights as the
10 issuer's one class of voting common stock or the issuer's class of
11 voting securities with the greatest voting rights, provided that the
12 issuer has only one-class of voting common stock or nonpreferred
13 voting securities outstanding upon consummation of the offer and
14 sale, a natural person who, either individually or jointly with the
15 person's spouse, (i) has a minimum net worth of two hundred fifty
16 thousand dollars (\$250,000) and had, during the immediately
17 preceding tax year, gross income in excess of one hundred thousand
18 dollars (\$100,000) and reasonably expects gross income in excess
19 of one hundred thousand dollars (\$100,000) during the current tax
20 year or (ii) has a minimum net worth of five hundred thousand
21 dollars (\$500,000). "Net worth" shall be determined exclusive of
22 home, home furnishings, and automobiles. Other assets included
23 in the computation of net worth may be valued at fair market value.
24 "Nonpreferred securities" means securities that have no preference
25 over any other securities with respect to distribution of assets on
26 liquidation or with respect to payment of dividends.

27 Each natural person specified above, by reason of his or her
28 business or financial experience, or the business or financial
29 experience of his or her professional adviser, who is unaffiliated
30 with and who is not compensated, directly or indirectly, by the
31 issuer or any affiliate or selling agent of the issuer, can be
32 reasonably assumed to have the capacity to protect his or her
33 interests in connection with the transaction. The amount of the
34 investment of each natural person shall not exceed 10 percent of
35 the net worth, as determined by this subparagraph, of that natural
36 person.

37 (F) Any other purchaser designated as qualified by rule of the
38 commissioner.

39 (3) Each purchaser represents that the purchaser is purchasing
40 for the purchaser's own account (or trust account, if the purchaser

1 is a trustee) and not with a view to or for sale in connection with
2 a distribution of the security.

3 (4) Each natural person purchaser, including a corporation,
4 partnership, or other organization specifically formed by natural
5 persons for the purpose of acquiring the securities offered by the
6 issuer, receives, at least five business days before securities are
7 sold to, or a commitment to purchase is accepted from, the
8 purchaser, a written offering disclosure statement that shall meet
9 the disclosure requirements of Regulation D (17 C.F.R. 230.501
10 et seq.), and any other information as may be prescribed by rule
11 of the commissioner, provided that the issuer shall not be obligated
12 pursuant to this paragraph to provide this disclosure statement to
13 a natural person qualified under Section 260.102.13 of Title 10 of
14 the California Code of Regulations. The offer or sale of securities
15 pursuant to a disclosure statement required by this paragraph that
16 is in violation of Section 25401, or that fails to meet the disclosure
17 requirements of Regulation D (17 C.F.R. 230.501 et seq.), shall
18 not render unavailable to the issuer the claim of an exemption from
19 Section 25110 afforded by this subdivision. This paragraph does
20 not impose, directly or indirectly, any additional disclosure
21 obligation with respect to any other exemption from qualification
22 available under any other provision of this section.

23 (5) (A) A general announcement of proposed offering may be
24 published by written document only, provided that the general
25 announcement of proposed offering sets forth the following
26 required information:

- 27 (i) The name of the issuer of the securities.
28 (ii) The full title of the security to be issued.
29 (iii) The anticipated suitability standards for prospective
30 purchasers.
31 (iv) A statement that (I) no money or other consideration is
32 being solicited or will be accepted, (II) an indication of interest
33 made by a prospective purchaser involves no obligation or
34 commitment of any kind, and, if the issuer is required by paragraph
35 (4) to deliver a disclosure statement to prospective purchasers,
36 (III) no sales will be made or commitment to purchase accepted
37 until five business days after delivery of a disclosure statement
38 and subscription information to the prospective purchaser in
39 accordance with the requirements of this subdivision.
40 (v) Any other information required by rule of the commissioner.

1 (vi) The following legend: “For more complete information
2 about (Name of Issuer) and (Full Title of Security), send for
3 additional information from (Name and Address) by sending this
4 coupon or calling (Telephone Number).”

5 (B) The general announcement of proposed offering referred
6 to in subparagraph (A) may also set forth the following
7 information:

8 (i) A brief description of the business of the issuer.

9 (ii) The geographic location of the issuer and its business.

10 (iii) The price of the security to be issued, or, if the price is not
11 known, the method of its determination or the probable price range
12 as specified by the issuer, and the aggregate offering price.

13 (C) The general announcement of proposed offering shall
14 contain only the information that is set forth in this paragraph.

15 (D) Dissemination of the general announcement of proposed
16 offering to persons who are not qualified purchasers, without more,
17 shall not disqualify the issuer from claiming the exemption under
18 this subdivision.

19 (6) No telephone solicitation shall be permitted until the issuer
20 has determined that the prospective purchaser to be solicited is a
21 qualified purchaser.

22 (7) The issuer files a notice of transaction under this subdivision
23 both (A) concurrent with the publication of a general announcement
24 of proposed offering or at the time of the initial offer of the
25 securities, whichever occurs first, accompanied by a filing fee, and
26 (B) within 10 business days following the close or abandonment
27 of the offering, but in no case more than 210 days from the date
28 of filing the first notice. The first notice of transaction under
29 subparagraph (A) shall contain an undertaking, in a form acceptable
30 to the commissioner, to deliver any disclosure statement required
31 by paragraph (4) to be delivered to prospective purchasers, and
32 any supplement thereto, to the commissioner within 10 days of
33 the commissioner’s request for the information. The exemption
34 from qualification afforded by this subdivision is unavailable if
35 an issuer fails to file the first notice required under subparagraph
36 (A) or to pay the filing fee. The commissioner has the authority
37 to assess an administrative penalty of up to one thousand dollars
38 (\$1,000) against an issuer that fails to deliver the disclosure
39 statement required to be delivered to the commissioner upon the
40 commissioner’s request within the time period set forth above.

1 Neither the filing of the disclosure statement nor the failure by the
2 commissioner to comment thereon precludes the commissioner
3 from taking any action deemed necessary or appropriate under this
4 division with respect to the offer and sale of the securities.

5 (o) An offer or sale of any security issued by a corporation or
6 limited liability company pursuant to a purchase plan or agreement,
7 or issued pursuant to an option plan or agreement, where the
8 security at the time of issuance or grant is exempt from registration
9 under the Securities Act of 1933, as amended, pursuant to Rule
10 701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions
11 of which are hereby incorporated by reference into this section,
12 provided that (1) the terms of any purchase plan or agreement shall
13 comply with Sections 260.140.42, 260.140.45, and 260.140.46 of
14 Title 10 of the California Code of Regulations, (2) the terms of
15 any option plan or agreement shall comply with Sections
16 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the
17 California Code of Regulations, and (3) the issuer files a notice of
18 transaction in accordance with rules adopted by the commissioner
19 no later than 30 days after the initial issuance of any security under
20 that plan, accompanied by a filing fee as prescribed by subdivision
21 (y) of Section 25608. The failure to file the notice of transaction
22 within the time specified in this subdivision shall not affect the
23 availability of this exemption. An issuer that fails to file the notice
24 shall, within 15 business days after discovery of the failure to file
25 the notice or after demand by the commissioner, whichever occurs
26 first, file the notice and pay the commissioner a fee equal to the
27 maximum aggregate fee payable had the transaction been qualified
28 under Section 25110.

29 Offers and sales exempt pursuant to this subdivision shall be
30 deemed to be part of a single, discrete offering and are not subject
31 to integration with any other offering or sale, whether qualified
32 under Chapter 2 (commencing with Section 25110), or otherwise
33 exempt, or not subject to qualification.

34 (p) An offer or sale of nonredeemable securities to accredited
35 investors (Section 28031) by a person licensed under the Capital
36 Access Company Law (Division 3 (commencing with Section
37 28000) of Title 4), provided that all purchasers either (1) have a
38 preexisting personal or business relationship with the offeror or
39 any of its partners, officers, directors, controlling persons, or
40 managers (as appointed or elected by the members), or (2) by

1 reason of their business or financial experience or the business or
2 financial experience of their professional advisers who are
3 unaffiliated with and who are not compensated by the issuer or
4 any affiliate or selling agent of the issuer, directly or indirectly,
5 could be reasonably assumed to have the capacity to protect their
6 own interests in connection with the transaction. All nonredeemable
7 securities shall be evidenced by certificates that shall have stamped
8 or printed prominently on their face a legend in a form to be
9 prescribed by rule or order of the commissioner restricting transfer
10 of the securities in the manner as the rule or order provides. The
11 exemption under this subdivision shall not be available for any
12 offering that is exempt or asserted to be exempt pursuant to Section
13 3(a)(11) of the Securities Act of 1933 (15 U.S.C. Sec. 77c(a)(11))
14 or Rule 147 (17 C.F.R. 230.147) thereunder or otherwise is
15 conducted by means of any form of general solicitation or general
16 advertising.

17 (q) Any offer or sale of any viatical or life settlement contract
18 or fractionalized or pooled interest therein in a transaction that
19 meets all of the following criteria:

20 (1) Sales of securities described in this subdivision are made
21 only to qualified purchasers or other persons the issuer reasonably
22 believes, after reasonable inquiry, to be qualified purchasers. A
23 corporation, partnership, or other organization specifically formed
24 for the purpose of acquiring the securities offered by the issuer in
25 reliance upon this exemption may be a qualified purchaser only if
26 each of the equity owners of the corporation, partnership, or other
27 organization is a qualified purchaser. Qualified purchasers include
28 the following:

29 (A) A person designated in Section 260.102.13 of Title 10 of
30 the California Code of Regulations.

31 (B) A person designated in subdivision (i) or any rule of the
32 commissioner adopted thereunder.

33 (C) A pension or profit-sharing trust of the issuer, a
34 self-employed individual retirement plan, or an individual
35 retirement account, if the investment decisions made on behalf of
36 the trust, plan, or account are made solely by persons who are
37 qualified purchasers.

38 (D) An organization described in Section 501(c)(3) of the
39 Internal Revenue Code, corporation, Massachusetts or similar
40 business trust, or partnership, each with total assets in excess of

1 five million dollars (\$5,000,000) according to its most recent
2 audited financial statements.

3 (E) A natural person who, either individually or jointly with the
4 person's spouse, (i) has a minimum net worth of one hundred fifty
5 thousand dollars (\$150,000) and had, during the immediately
6 preceding tax year, gross income in excess of one hundred thousand
7 dollars (\$100,000) and reasonably expects gross income in excess
8 of one hundred thousand dollars (\$100,000) during the current tax
9 year or (ii) has a minimum net worth of two hundred fifty thousand
10 dollars (\$250,000). "Net worth" shall be determined exclusive of
11 home, home furnishings, and automobiles. Other assets included
12 in the computation of net worth may be valued at fair market value.

13 Each natural person specified above, by reason of his or her
14 business or financial experience, or the business or financial
15 experience of his or her professional adviser, who is unaffiliated
16 with and who is not compensated, directly or indirectly, by the
17 issuer or any affiliate or selling agent of the issuer, can be
18 reasonably assumed to have the capacity to protect his or her
19 interests in connection with the transaction.

20 The amount of the investment of each natural person shall not
21 exceed 10 percent of the net worth, as determined by this
22 subdivision, of that natural person.

23 (F) Any other purchaser designated as qualified by rule of the
24 commissioner.

25 (2) Each purchaser represents that the purchaser is purchasing
26 for the purchaser's own account (or trust account, if the purchaser
27 is a trustee) and not with a view to or for sale in connection with
28 a distribution of the security.

29 (3) Each natural person purchaser, including a corporation,
30 partnership, or other organization specifically formed by natural
31 persons for the purpose of acquiring the securities offered by the
32 issuer, receives, at least five business days before securities
33 described in this subdivision are sold to, or a commitment to
34 purchase is accepted from, the purchaser, the following information
35 in writing:

36 (A) The name, principal business and mailing address, and
37 telephone number of the issuer.

38 (B) The suitability standards for prospective purchasers as set
39 forth in paragraph (1) of this subdivision.

1 (C) A description of the issuer's type of business organization
2 and the state in which the issuer is organized or incorporated.

3 (D) A brief description of the business of the issuer.

4 (E) If the issuer retains ownership or becomes the beneficiary
5 of the insurance policy, an audit report of an independent certified
6 public accountant together with a balance sheet and related
7 statements of income, retained earnings, and cashflows that reflect
8 the issuer's financial position, the results of the issuer's operations,
9 and the issuer's cashflows as of a date within 15 months before
10 the date of the initial issuance of the securities described in this
11 subdivision. The financial statements listed in this subparagraph
12 shall be prepared in conformity with generally accepted accounting
13 principles. If the date of the audit report is more than 120 days
14 before the date of the initial issuance of the securities described
15 in this subdivision, the issuer shall provide unaudited interim
16 financial statements.

17 (F) The names of all directors, officers, partners, members, or
18 trustees of the issuer.

19 (G) A description of any order, judgment, or decree that is final
20 as to the issuing entity of any state, federal, or foreign country
21 governmental agency or administrator, or of any state, federal, or
22 foreign country court of competent jurisdiction (i) revoking,
23 suspending, denying, or censuring for cause any license, permit,
24 or other authority of the issuer or of any director, officer, partner,
25 member, trustee, or person owning or controlling, directly or
26 indirectly, 10 percent or more of the outstanding interest or equity
27 securities of the issuer, to engage in the securities, commodities,
28 franchise, insurance, real estate, or lending business or in the offer
29 or sale of securities, commodities, franchises, insurance, real estate,
30 or loans, (ii) permanently restraining, enjoining, barring,
31 suspending, or censuring any such person from engaging in or
32 continuing any conduct, practice, or employment in connection
33 with the offer or sale of securities, commodities, franchises,
34 insurance, real estate, or loans, (iii) convicting any such person
35 of, or pleading nolo contendere by any such person to, any felony
36 or misdemeanor involving a security, commodity, franchise,
37 insurance, real estate, or loan, or any aspect of the securities,
38 commodities, franchise, insurance, real estate, or lending business,
39 or involving dishonesty, fraud, deceit, embezzlement, fraudulent
40 conversion, or misappropriation of property, or (iv) holding any

1 such person liable in a civil action involving breach of a fiduciary
2 duty, fraud, deceit, embezzlement, fraudulent conversion, or
3 misappropriation of property. This subparagraph does not apply
4 to any order, judgment, or decree that has been vacated, overturned,
5 or is more than 10 years old.

6 (H) Notice of the purchaser's right to rescind or cancel the
7 investment and receive a refund pursuant to Section 25508.5.

8 (I) The name, address, and telephone number of the issuing
9 insurance company, and the name, address, and telephone number
10 of the state or foreign country regulator of the insurance company.

11 (J) The total face value of the insurance policy and the
12 percentage of the insurance policy the purchaser will own.

13 (K) The insurance policy number, issue date, and type.

14 (L) If a group insurance policy, the name, address, and telephone
15 number of the group, and, if applicable, the material terms and
16 conditions of converting the policy to an individual policy,
17 including the amount of increased premiums.

18 (M) If a term insurance policy, the term and the name, address,
19 and telephone number of the person who will be responsible for
20 renewing the policy if necessary.

21 (N) That the insurance policy is beyond the state statute for
22 contestability and the reason therefor.

23 (O) The insurance policy premiums and terms of premium
24 payments.

25 (P) The amount of the purchaser's moneys that will be set aside
26 to pay premiums.

27 (Q) The name, address, and telephone number of the person
28 who will be the insurance policy owner and the person who will
29 be responsible for paying premiums.

30 (R) The date on which the purchaser will be required to pay
31 premiums and the amount of the premium, if known.

32 (S) A statement to the effect that any projected rate of return to
33 the purchaser from the purchase of a viatical or life settlement
34 contract or a fractionalized or pooled interest therein is based on
35 an estimated life expectancy for the person insured under the life
36 insurance policy; that the return on the purchase may vary
37 substantially from the expected rate of return based upon the actual
38 life expectancy of the insured that may be less than, equal to, or
39 may greatly exceed the estimated life expectancy; and that the rate
40 of return would be higher if the actual life expectancy were less

1 than, and lower if the actual life expectancy were greater than the
2 estimated life expectancy of the insured at the time the viatical or
3 life settlement contract was closed.

4 (T) A statement that the purchaser should consult with his or
5 her tax adviser regarding the tax consequences of the purchase of
6 the viatical or life settlement contract or fractionalized or pooled
7 interest therein and, if the purchaser is using retirement funds or
8 accounts for that purchase, whether or not any adverse tax
9 consequences might result from the use of those funds for the
10 purchase of that investment.

11 (U) Any other information as may be prescribed by rule of the
12 commissioner.

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